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10/766,107	01/27/2004	Sybrandus B.V. Munsterhuis	H0004178-0765	2191

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EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/766,107

Applicant(s)

MUNSTERHUIS, SYBRANDUS  
B.V.

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 32,33,35 and 37-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32,33,35 and 37-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Response to Arguments**

Applicant's arguments with respect to claims 32, 33, 35 and 37-44 have been considered but are moot in view of the new ground(s) of rejection.

The indicated allowability of claims 32, 33, 35 and 37-44 have is withdrawn in view of the newly discovered reference(s) to **US002512173 (Ray)**. Rejections based on the newly cited reference(s) follow.

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 35 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 35, 39, 41 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: The structure which interrelates and correlates the mean which permits or causes the 1) "power to the controller can be cut when the burner flame at the main burner is extinguished" (claims 39, 41); and 2) the structure or elements related to the electric servo operator main valve such that it "can open the main valve..." (claims 40, 42).

Claim 39 recites the limitation "the main burner". There is insufficient antecedent basis for this limitation in the claim.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

**Claims: Rejected under 35 U.S.C. 102(b)**

Claims 32, 33, 37, 39, 40, 41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by US002512173 (Ray)(newly cited).

US002512173 (Ray) shows (figure 9) and disclose a method of using a controller to control gas flow to a pilot burner in fluid communication with a first pilot valve and a second pilot valve, comprising:

- using a selectable input device (10) to open the first pilot valve (10) to allow gas flow to the pilot burner (3, 7);

- lighting the pilot burner (see column 3, line 8-24) and heating one or more thermal detection devices (8, 9, 95, 96) in thermal communication with the pilot burner, wherein the one or more thermal detection devices outputs a variable voltage potential (thermocouples);
- supplying the voltage potential from the one or more thermal detection devices to a controller (61) to power a second pilot valve (57, 58) to allow gas flow to the pilot burner;
- using the selectable input device to close the first pilot valve (see column 3, line 8-24);
- maintaining gas flow to the pilot burner through the second pilot valve (see column 3, line 8-24);
- wherein the only voltage potential used to power the controller is supplied by the one or more thermal detection devices (8);
- cutting power to the controller when the pilot flame is extinguished (see column 3, line 8-24) and stopping gas flow to the pilot burner when the power to the controller is cut; and
- an electric servo operator main valve (9, 42, 43).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner

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to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims: Rejected under 35 U.S.C. 103(a)**

Claims 35, 38, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002512173 (Ray)** in view of **US004866363 (Patton et al)**.

**US002601321 (Ray)** shows and discloses a method of using a controller to control gas flow to a pilot burner in fluid communication with a first pilot valve and a second pilot valve substantially as set forth in the claims.

**US002601321 (Ray)** shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the selectable input device being coupled to a potentiometer that can output to the controller an indication of a position of the selectable input device;
- the controller comprises microprocessor; and
- wherein gas flow to the main burner will be stopped when the power to the controller is cut or when the main flame is extinguished; and a power converter.

**US004866363 (Patton et al)** teaches, from applicant's same burner control valve field of endeavor, operating a burner controller by means of a microprocessor and providing control actuators with potentiometer for the purpose of providing the microprocessor controller with information indicative of the position of control actuators.

In regard to claims **US002512173 (Ray)**, for the purpose of providing control actuators with potentiometer for the purpose of providing the microprocessor controller with information indicative of the position of control actuators, it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the controller of actuators of **US002512173 (Ray)** to include control actuators with potentiometer for the purpose of

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providing a microprocessor controller with information indicative of the position of control actuators, in view of the teaching of **US004866363 (Patton et al)**. Also, in regard to claim **35, 38, 43** and **44**, Official Notice is taken that it is well known in the burner control field of endeavor to cut power to main burner control valves in order to stop gas flow to prevent dangerous conditions within burner systems due to the build up of raw fuel gas.

And, Official Notice is taken that it is well known in the art to provide necessary "power converter" (see for example **US004696639 (Bohan, Jr.)** means to modify voltage produce from thermal detection devices to be in a form suitable for interacting with various control components. Therefore, in regard to claims **35, 38, 43** and **44**, it would have been obvious to a person having ordinary skill in the art endeavor to modify **US002512173 (Ray)** to include means cut power to main burner control valves in order to stop gas flow to prevent dangerous conditions within burner systems due to the build up of raw fuel gas and to include necessary "power converter" means to modify voltage produce from thermal detection devices to be in a form suitable for interacting with various control components, in view of that which is well known in the art.

### **Conclusion**

See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

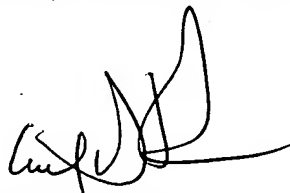
### **USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a stylized flourish extending to the right.

CARL D. PRICE

Primary Examiner

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CP